

AMENDED IN ASSEMBLY JULY 2, 2001

AMENDED IN SENATE MAY 15, 2001

SENATE BILL

No. 542

Introduced by Senator Ortiz

February 22, 2001

An act to amend Sections 7000, 7001, 7002, 7003, 7005, 7007, 7010, 7010.5, 7010.7, 7012, 7013, 7014, 7016, 7021, 7025, 7054.6, 7104.1, 7109, 7116, 7200, 8100, 8300, 8571, and 8650 of, to amend the heading of Chapter 1 (commencing with Section 8100) of Part 1 of Division 8 of, *to add Section 8650.5 to*, and to repeal Sections 7017, 7054.5, 8113.2, 8301, 8302, 8303, 8304, 8305, 8306, 8307, and 8308 of, the Health and Safety Code, relating to cemeteries.

LEGISLATIVE COUNSEL'S DIGEST

SB 542, as amended, Ortiz. Cemeteries.

Existing law regulates the business of cemeteries and defines key terminology used in the cemetery business.

This bill would make changes to the definitions used in the cemetery business in that it clarifies, amends, and eliminates various definitions.

This bill would combine the statutes, which provided for a cemetery authority's power to regulate the use, care, control, management, restriction, and protections of the cemetery land, into one statutory section and repeal other sections that duplicate the powers of the cemetery authority.

~~This bill would create an inalienable property right in a cemetery plot that has been conveyed by deed or certificate of ownership as a family plot and would prohibit the sale of any occupied portion of the family plot.~~

~~This bill would further allow an heir to a family plot, where human remains are contained in a portion of the family plot, to make the unoccupied portion of the plot available for sale as a property interest and precludes the plot from becoming inalienable by virtue of operation of law.~~

Under existing law, if the owner of a cemetery plot transferred to the owner by deed or certificate of ownership dies without making a disposition of the plot either in his or her will or by specific devise or by a written declaration filed and recorded in the office of the cemetery authority, the plot becomes inalienable upon the person's death and becomes the family plot of the owner.

This bill would provide that if the owner of a family plot dies without making disposition of the plot, the unoccupied portion or portions of the plot would pass by the laws of intestate succession upon the owner's death. This bill would also provide that the unoccupied portion or portions of any family plot that became inalienable pursuant to the provisions of former Section 8650 shall pass by the laws of intestate succession and shall become alienable. This bill would establish specific requirements for transferring title to those plots.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 7000 of the Health and Safety Code is
- 2 amended to read:
- 3 7000. The definitions in this chapter apply to this division and
- 4 to Division 8 (commencing with Section 8100).
- 5 SEC. 2. Section 7001 of the Health and Safety Code is
- 6 amended to read:
- 7 7001. "Human remains" or "remains" means the body of a
- 8 deceased person, regardless of its stage of decomposition, and
- 9 cremated remains.
- 10 SEC. 3. Section 7002 of the Health and Safety Code is
- 11 amended to read:
- 12 7002. "Cremated remains" means the material that is left
- 13 after cremation in a crematory of a body or a part of a body of a
- 14 deceased person.
- 15 SEC. 4. Section 7003 of the Health and Safety Code is
- 16 amended to read:



~~7003. (a) A “cemetery” means both a place used, or intended to be used, and dedicated, for cemetery purposes, and is limited to any one, or a combination of more than one, of the following:~~

~~7003. “Cemetery” means either of the following:~~

~~(a) Any of the following that is used or intended to be used and dedicated for cemetery purposes:~~

~~(1) A burial park, for earth interments.~~

~~(2) A mausoleum, for crypt or vault interments.~~

~~(3) A crematory, or a crematory and columbarium, for cinerary interments.~~

~~(b) A place where six or more human bodies are buried.~~

SEC. 5. Section 7005 of the Health and Safety Code is amended to read:

7005. Except in Part 5 (commencing with Section 9501) of Division 8, “mausoleum” means a structure or building for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated, for cemetery purposes.

SEC. 6. Section 7007 of the Health and Safety Code is amended to read:

7007. Except in Part 5 (commencing with Section 9501) of Division 8, “columbarium” means a structure, room, or other space in a building or structure containing niches for inurnment of cremated human remains in a place used, or intended to be used, and dedicated, for cemetery purposes.

SEC. 7. Section 7010 of the Health and Safety Code is amended to read:

7010. “Cremation” means the process by which the following three steps are taken:

(a) The reduction of the body of a deceased human to its essential elements by incineration.

(b) The repositioning or moving of the body or remains during incineration to facilitate the process.

(c) The processing of the remains after removal from the cremation chamber pursuant to Section 7010.3.

SEC. 8. Section 7010.5 of the Health and Safety Code is amended to read:

7010.5. “Residue” means human ashes, bone fragments, prostheses, and disintegrated material from the chamber itself, imbedded in cracks and uneven spaces of a cremation chamber, that cannot be removed through reasonable manual contact with

1 sweeping or scraping equipment. Material left in the cremation
2 chamber, after the completion of a cremation, that can be
3 reasonably removed shall not be considered “residue.”

4 SEC. 9. Section 7010.7 of the Health and Safety Code is
5 amended to read:

6 7010.7. “Scattering” means the authorized dispersal of
7 cremated remains at sea, in other areas of the state, or commingling
8 in a defined area within a dedicated cemetery, in accordance with
9 this part.

10 SEC. 10. Section 7012 of the Health and Safety Code is
11 amended to read:

12 7012. “Entombment” means the process of placing human
13 remains in a crypt or vault.

14 SEC. 11. Section 7013 of the Health and Safety Code is
15 amended to read:

16 7013. “Burial” means the process of placing human remains
17 in a grave.

18 SEC. 12. Section 7014 of the Health and Safety Code is
19 amended to read:

20 7014. “Grave” means a space of earth in a burial park, used,
21 or intended to be used, for the disposition of human remains.

22 SEC. 13. Section 7016 of the Health and Safety Code is
23 amended to read:

24 7016. “Niche” means a space in a columbarium used, or
25 intended to be used, for the placement of cremated human remains.

26 SEC. 14. Section 7017 of the Health and Safety Code is
27 repealed.

28 SEC. 15. Section 7021 of the Health and Safety Code is
29 amended to read:

30 7021. “Directors” or “governing body” means the board of
31 directors, board of trustees, or other policymaking body of a
32 cemetery association.

33 SEC. 16. Section 7025 of the Health and Safety Code is
34 amended to read:

35 7025. “Disposition” means the final arrangements made for
36 human remains within California, or the shipment outside of
37 California, for lawful final arrangements or scattering elsewhere,
38 including release of remains pursuant to Section 103060.

39 SEC. 17. Section 7054.5 of the Health and Safety Code is
40 repealed.

1 SEC. 18. Section 7054.6 of the Health and Safety Code is
2 amended to read:

3 7054.6. (a) Cremated remains may be removed in a durable
4 container from the place of cremation or interment and kept in the
5 dwelling owned or occupied by the person having the right to
6 control disposition of the remains under Section 7100, or the
7 durable container holding the cremated remains may be kept in a
8 church or religious shrine, if written permission of the church or
9 religious shrine is obtained and there is no conflict with local use
10 permit requirements or zoning laws, if the removal is under the
11 authority of a permit for disposition granted under Section
12 103060. The placement, in any place, of six or more cremated
13 remains under this section does not constitute the place a cemetery,
14 as defined in Section 7003.

15 (b) Prior to disposition of cremated remains, every licensee or
16 registrant pursuant to Chapter 12 (commencing with Section
17 7600) or Chapter 19 (commencing with Section 9600) of Division
18 3 of the Business and Professions Code, and the agents and
19 employees of the licensee or registrant shall do all of the following:

20 (1) Remove the cremated remains from the place of cremation
21 in a durable container.

22 (2) Keep the cremated remains in a durable container.

23 (3) Store the cremated remains in a place free from exposure to
24 the elements.

25 (4) Responsibly maintain the cremated remains.

26 SEC. 19. Section 7104.1 of the Health and Safety Code is
27 amended to read:

28 7104.1. If, within 30 days after the coroner notifies or
29 diligently attempts to notify the person responsible for the
30 interment of a decedent's remains which are in the possession of
31 the coroner, the person fails, refuses, or neglects to inter the
32 remains, the coroner may inter the remains. The coroner may
33 recover any expenses of the interment from the responsible person.

34 SEC. 20. Section 7109 of the Health and Safety Code is
35 amended to read:

36 7109. The court shall allow costs and reasonable attorney's
37 fees to a prevailing plaintiff against all defendants, other than the
38 coroner.

39 SEC. 21. Section 7116 of the Health and Safety Code is
40 amended to read:

7116. Cremated remains may be scattered or placed in areas where no local prohibition exists, provided that the cremated remains are not distinguishable to the public, are not in a container, and that the person who has control over disposition of the cremated remains has obtained written permission of the property owner or governing agency to scatter on the property. A state or local agency may adopt an ordinance, regulation, or policy, as appropriate, authorizing, consistent with this section, or specifically prohibiting, the scattering of cremated human remains on lands under the agency's jurisdiction. The placement or scattering of the cremated remains of more than one person in one location pursuant to this section shall not create a cemetery pursuant to Section 7003 or any other provision of law.

SEC. 22. *Section 7200 of the Health and Safety Code is amended to read:*

7200. Every head of a public institution, city or county undertaker, or ~~State state~~, county, or city officer having charge or control of remains to be interred at public expense, shall use due diligence to notify the relatives of the decedent. In the absence of any known relative of *the* decedent desiring to direct the disposition of the remains in a manner other than ~~in this chapter~~ provided *in this chapter*, and upon written request of the ~~State state~~ department that ~~such~~ *these* notices are required for a definite period specified in the request, ~~such~~ *that* officer shall notify the ~~State state~~ department ~~by telegraph collect~~, immediately after the lapse of twenty-four hours after death, stating, whenever possible, the name, age, sex, and cause of death of the decedent.

SEC. 23. The heading of Chapter 1 (commencing with Section 8100) of Part 1 of Division 8 of the Health and Safety Code is amended to read:

CHAPTER 1. DEFINITIONS

~~SEC. 23.—~~

SEC. 24. Section 8100 of the Health and Safety Code is amended to read:

8100. The definitions set forth in Chapter 1 (commencing with Section 7000) of Part 1 of Division 7 shall be applicable to this division.

~~SEC. 24.—~~

1 *SEC. 25.* Section 8113.2 of the Health and Safety Code is
2 repealed.

3 ~~*SEC. 25.*~~

4 *SEC. 26.* Section 8300 of the Health and Safety Code is
5 amended to read:

6 8300. (a) A cemetery authority may make, adopt, amend, add
7 to, revise, or modify, and enforce rules and regulations for the use,
8 care, control, management, restriction and protection of all or any
9 part of its cemetery and for the other purposes specified in this
10 article.

11 (b) The cemetery authority's power includes, but is not limited
12 to, the following:

13 (1) Restricting and limiting the use of all property within its
14 cemetery.

15 (2) Regulating the uniformity, class, and kind of all markers,
16 monuments, and other structures within the cemetery and its
17 subdivisions, but shall not require, as a condition to the erection of
18 a marker, monument, or other structure within the cemetery, that
19 the marker, monument, or other structure be purchased from or
20 through the cemetery authority.

21 (3) Prohibiting the erection of monuments, markers, or other
22 structures in or upon any portion of the cemetery.

23 (4) Regulating or prohibiting monuments, effigies, and
24 structures within any portion of the cemetery and provide for their
25 removal.

26 (5) Regulating or preventing the introduction or care of plants
27 or shrubs within the cemetery.

28 (6) Preventing interment in any part of the cemetery of human
29 remains not entitled to interment and preventing the use of
30 interment plots for purposes violative of its restrictions or rules and
31 regulations.

32 (7) Regulating the conduct of persons and preventing improper
33 assemblages in the cemetery.

34 (8) Making and enforcing rules and regulations for all other
35 purposes deemed necessary by the cemetery authority for the
36 proper conduct of the business of the cemetery, for the transfer of
37 any plot or the right of interment, and the protection and
38 safeguarding of the premises, and the principles, plans, and ideals
39 on which the cemetery is conducted.

40 ~~*SEC. 26.*~~

1 *SEC. 27.* Section 8301 of the Health and Safety Code is
2 repealed.

3 ~~*SEC. 27.*~~

4 *SEC. 28.* Section 8302 of the Health and Safety Code is
5 repealed.

6 ~~*SEC. 28.*~~

7 *SEC. 29.* Section 8303 of the Health and Safety Code is
8 repealed.

9 ~~*SEC. 29.*~~

10 *SEC. 30.* Section 8304 of the Health and Safety Code is
11 repealed.

12 ~~*SEC. 30.*~~

13 *SEC. 31.* Section 8305 of the Health and Safety Code is
14 repealed.

15 ~~*SEC. 31.*~~

16 *SEC. 32.* Section 8306 of the Health and Safety Code is
17 repealed.

18 ~~*SEC. 32.*~~

19 *SEC. 33.* Section 8307 of the Health and Safety Code is
20 repealed.

21 ~~*SEC. 33.*~~

22 *SEC. 34.* Section 8308 of the Health and Safety Code is
23 repealed.

24 ~~*SEC. 34.*~~

25 *SEC. 35.* Section 8571 of the Health and Safety Code is
26 amended to read:

27 8571. (a) All plots, the use of which has been conveyed by
28 deed or certificate of ownership as a separate plot, are indivisible
29 except with the consent of the cemetery authority, or as provided
30 by law.

31 (b) A plot, the use of which has been conveyed by deed or
32 certificate of ownership as a family plot, thereby becomes
33 inalienable and shall be held as a family plot of the owner.

34 ~~*SEC. 35.*~~

35 *SEC. 36.* Section 8650 of the Health and Safety Code is
36 amended to read:

37 8650. (a) Whenever an interment of the remains of a member
38 or of a relative of a member of the family of the record owner or
39 of the remains of the record owner is made in a plot transferred by
40 deed or certificate of ownership to an individual owner ~~and the~~



1 owner dies without making disposition of the plot either in his or
2 her will by a specific devise, or by a written declaration filed and
3 recorded in the office of the cemetery authority, any grave, crypt,
4 vault, or niche in which remains have been interred thereby
5 becomes inalienable and shall be held as the family plot of the
6 owner.

7 ~~(b) As of January 1, 2002, an unoccupied grave, crypt, vault,~~
8 ~~or niche which, solely by virtue of this section, was inalienable~~
9 ~~shall become alienable., the plot shall become the family plot of the~~
10 ~~owner.~~

11 *(b) If the owner dies without making disposition of the plot*
12 *either in his or her will by a specific devise, or by a written*
13 *declaration filed and recorded in the office of the cemetery*
14 *authority, the unoccupied portions of the plot shall pass according*
15 *to the laws of intestate succession as set forth in Sections 6400 to*
16 *6413, inclusive, of the Probate Code.*

17 *(c) As of January 1, 2002, any family plot that became*
18 *inalienable pursuant to this section as it read on December 31,*
19 *2001, shall no longer be inalienable and shall pass according to*
20 *the laws of intestate succession as set forth in Sections 6400 to*
21 *6413, inclusive, of the Probate Code.*

22 *SEC. 37. Section 8650.5 is added to the Health and Safety*
23 *Code, to read:*

24 *8650.5. An affidavit by a person having knowledge of the facts*
25 *setting forth the fact of the death of the owner, the absence of a*
26 *disposition of the plot by the owner in his or her will by a specific*
27 *devise, the name of the person or persons who are owners of the*
28 *plot by virtue of the laws of intestate succession, and the consent*
29 *of that person or those persons to the sale of the plot shall*
30 *constitute complete authorization to the cemetery authority to*
31 *permit the sale of the unoccupied portions of the plot.*

